IN THE HIGH COURT OF BOMBAY AT GOA
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WRIT PETITION NO. 224 OF 2003

Smt. Alka Toraskar,
major,
r/o FX-4, Moonraker Apts.,
Alto Mapusa, Goa. ... Petitioner

Versus

Shri Ashok Anant Toraskar,
major, r/o FX-4,
Moonraker Apts.,
Alto Mapusa, Goa. ... Respondent.

Smt. A. A. Agni, advocate for the petitioner.

Shri G. Sardessai, advocate for the respondent.

CORAM : F. I. REBELLO, J.

DATE : 5th June, 2003.

ORAL JUDGMENT

Rule. Respondent waives service. Heard forthwith.

2. This petition is directed against the Order of the Civil Judge, Senior Division, Mapusa, whereby the learned Judge has directed that the matter be referred to Lok Adalat to be held on 26th July, 2003 in Mapusa.

3. Suit for divorce has been filed in the year 1995. The entire evidence has been recorded and is completed. The petitioner has filed written arguments. No attempts were made in the course of the proceedings for any settlement, nor is the Court informed that any evidence was led in whatever form to show that there are elements of settlement possible. What the Court has to do

now is to proceed to pass the judgment on merits. To exercise powers under Section 89 of the Code of Civil Procedure, the trial Court has prima facie to arrive at a finding that there are elements of settlement possible. It is only if the Court, on the material before it, is of the opinion considering the nature or the case, or the dispute, that it is possible that a settlement can be attempted, then refer the parties, amongst others, to Lok Adalat. In the instant case, there is nothing on record to show that the learned Judge proceeded under Section 89 C.P.C. and even considered whether there was any element of settlement possible. To my mind, before jurisdiction is exercised under Section 89 C.P.C., the Court must address itself to that question. Reference to Lok Adalat is not an empty formality. It is a recourse to an alternate system for settlement of a dispute. For that purpose, as the Section itself points out, it must appear to the Court that there exists a possibility of settlement. Here none existed. In the light of that, the exercise of jurisdiction by the learned trial Court was based on no material and in those circumstances, the impugned Order is liable to be set aside.

4. Rule made absolute in terms of prayer Clause (a). The trial Court is directed to dispose of the suit at the earliest.

F.I. REBELLO, J.